No. 17-30397

In the United States Court of Appeals for the Fifth Circuit

JUNE MEDICAL SERVICES L.L.C., on behalf of its patients, physicians, and staff, doing business as HOPE MEDICAL GROUP FOR WOMEN; JOHN DOE 1; JOHN DOE 2,

Plaintiffs/Appellees,

v.

DOCTOR REBEKAH GEE, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals,

Defendant/Appellant.

Appeal from the United States District Court for the Middle District of Louisiana, Baton Rouge, Case No. 3:14-cv-0525-JWD-RLB, Hon. John W. deGravelles

APPELLEES' MOTION TO STAY THE MANDATE PENDING THE FILING OF A PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Plaintiffs/Appellees	**Counsel Appearing for Plaintiffs/Appellees**
Hope Medical Group for Women Dr. John Doe 1 Dr. John Doe 2	Travis J. Tu Julie Rikelman CENTER FOR REPRODUCTIVE RIGHTS Dimitra Doufekias MORRISON & FOERSTER LLP Charles M. (Larry) Samuel III RITTENBERG, SAMUEL AND PHILLIPS, LLC
Defendant/Appellant	**Counsel Appearing for Defendant/Appellant**
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Other Persons or Entities Known to be Interested

Delta Clinic of Baton Rouge
Women's Health Care Center
Dr. John Doe 3
Dr. John Doe 5
Dr. John Doe 6

Plaintiff Hope Medical Group for Women has no parent corporation, and no publicly held corporation holds 10% or more of its shares.

Dated: January 25, 2019

/s/ Travis J. Tu
Travis J. Tu

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On January 18, 2019, this Court denied Plaintiffs' petition to rehear en banc a decision by a divided panel of this Court upholding Louisiana's Act 620, which mandates that physicians who provide abortion services must hold admitting privileges at a local hospital. Plaintiffs intend to file a petition for certiorari with the U.S. Supreme Court seeking review of the panel's decision. To preserve the status quo, and to protect women of reproductive age in Louisiana from irreparable harm, Plaintiffs request that this Court stay the mandate while the Supreme Court considers Plaintiffs' certiorari petition.[1]

The criteria for a stay are clearly met. Judge Higginbotham strenuously dissented from the panel majority's decision; six active judges of this Court voted to rehear this appeal en banc; and Judge Dennis and Judge Higginson filed separate dissenting opinions from the denial of rehearing. For all the reasons set forth in the three dissents, there is a reasonable probability that the Supreme Court will grant certiorari and reverse the decision.

Foremost, the panel majority's decision directly conflicts with the Supreme Court's decision in *Whole Woman's Health v. Hellerstedt* ("*WWH*"), 136 S. Ct. 2292 (2016), which held that a Texas law identical to Act 620 was unconstitutional. Indeed, Judge Higginson observed in his dissenting opinion that

[1] Counsel for the parties conferred on January 24, 2019, and Defendant intends to oppose this motion.

none of the Justices of the Supreme Court who decided *WWH* would likely endorse the panel majority's decision, including the Justices who were in dissent.

The panel majority's decision also completely upends uniformity in federal law. This is the ***only*** federal court decision to overturn a permanent injunction against an admitting privileges law after *WWH*. Even within this Circuit, the panel majority's decision conflicts with Judge E. Grady Jolly's prior decision in *Jackson Women's Health Organization v. Currier*, 760 F.3d 448 (5th Cir. 2014), which held that an identical Mississippi law was likely unconstitutional.

In addition, the panel majority's decision disregards binding precedent holding that appellate judges must generally defer to the district court's factual findings and credibility determinations. *See, e.g., Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985). In his dissenting opinion, Judge Dennis observed that the panel majority's retrial of facts on appeal was so "egregious and pervasive" that, if allowed to stand, the decision will have dire implications beyond this case.

In the absence of a stay, women's access to abortion services will be virtually eliminated in Louisiana. The panel majority found that several physicians who provide abortion services in Louisiana could have tried harder to obtain hospital admitting privileges. But the panel did not disturb the district court's finding that, when the factual record closed, there were only two physicians in

Louisiana with admitting privileges who provide abortions. Nor did the panel disturb the district court's finding that one of those physicians will stop providing abortions out of a legitimate fear for his safety, once Act 620 renders him the lone provider in northern Louisiana.

One doctor at one clinic cannot possibly meet the needs of approximately 10,000 women who seek abortion services in Louisiana every year. Moreover, because this doctor only performs abortions in earlier stages of pregnancy, there will be no physician in Louisiana providing abortions between 17 weeks and the legal limit of 21 weeks, 6 days gestation.

Such a drastic reduction in abortion access will cause a cascade of harms, many of which are irreparable. Some women will be unable to access abortion services altogether. Other women, even if able to access care, will face increased travel, longer wait times, and delays in accessing care that will expose them to greater health risks. Meanwhile, clinics that are forced to close may never reopen. Clinics lack the financial resources to survive a suspension of their operations. And physicians and staff at these clinics may need to seek out other employment, if not relocate to other states entirely.

Louisiana will suffer no harm from a stay. Act 620 has already been enjoined for several years, and the law is not necessary to ensure the health or safety of women seeking abortions. Indeed, even according to the panel majority,

Act 620 does not further the state's interest in women's health or safety; it only serves a "minimal" credentialing function.

The balance of hardships overwhelmingly favors maintaining women's access to abortion in Louisiana while the Supreme Court considers Plaintiffs' petition for certiorari.

BACKGROUND

On August 31, 2014, the district court entered a TRO barring enforcement of Act 620 before the law went into effect. ROA.467-85. On January 26, 2016, the district court converted the TRO into a preliminary injunction after holding a bench trial. ROA.3748-859. On April 26, 2017, the district court held that Act 620 is unconstitutional under *WWH* and entered a declaratory judgment and permanent injunction. ROA.4174-289.

Act 620 requires a physician to hold "active admitting privileges" at a hospital within 30 miles of where an abortion is performed. La. Rev. Stat. § 40:1061.10(A)(2)(a). "Active admitting privileges" means the physician is on the hospital's medical staff, with the ability to admit patients and provide diagnostic and surgical services. *Id*.

Based upon an extensive factual record, the district court found that Act 620 provides no benefit to women's health or safety and serves no relevant credentialing function. ROA.4282-84. At the same time, the district court found

that Act 620 would "cripple" abortion access by leaving only "one provider and one clinic" for approximately 10,000 women who seek abortions in Louisiana each year. ROA.4285, 4270.

Because one physician cannot possibly meet that demand, the district court found that Act 620 would burden *all* women who seek abortions in Louisiana, and the significant harms to women will include decreased access, longer travel, longer wait times, and increased health risks. ROA.4285. Moreover, because the one physician who would continue to provide abortions under Act 620 only provides abortions at earlier stages of pregnancy, "no physician in Louisiana" would be left "providing abortions between 17 weeks and 21 weeks, six days gestation." ROA.4275.

In other words, if Act 620 becomes enforceable, it will have the effect of imposing a pre-viability ban for all women who need an abortion after 17 weeks. Women who need abortions before 17 weeks "w[ould] face substantial obstacles in exercising their constitutional right to choose abortion due to the dramatic reduction in abortion services." ROA.4285.

On September 26, 2018, a divided panel of this Court reversed the district court's judgment. *June Med. Servs. L.L.C. v. Gee*, 905 F.3d 787, 787-815 (5th Cir. 2018) ("Opinion"). The panel majority set aside nearly all of the district court's factual findings; however, the panel did not disturb the finding that Act 620

provides no health or safety benefits to women. *Id.* at 805-07. The panel majority also did not disturb the district court's findings that, as of the time the record closed, only two physicians in Louisiana who provide abortion services (Does 3 and 5) had admitting privileges, and one of those physicians (Doe 3) will not continue to provide abortions if Act 620 renders him the last provider in the northern region of the state. *Id.* at 793-801, 810-11.

Judge Higginbotham dissented. *June Med. Servs.*, 905 F.3d at 816-35 ("Dissent *I*"). In his dissenting opinion, Judge Higginbotham identified numerous ways in which the majority "fail[ed] to meaningfully apply" *WWH* and violated Supreme Court precedent, and he criticized the majority for ignoring well-settled precedent that "appellate judges are not the triers of fact." *Id*. at 816. Judge Higginbotham urged that the panel's ruling "ought not stand." *Id*. at 835.

Plaintiffs timely filed with this Court a petition for rehearing en banc, which was denied on January 18, 2019. Six active judges voted to rehear the appeal en banc, and Judge Dennis and Judge Higginson filed dissents from the denial of rehearing. Judge Dennis demonstrated that the panel majority's decision "clear[ly] conflict[s]" with *WWH* and faulted the panel for "egregious[ly] and pervasive[ly]" disregarding the trial court's factual findings. *June Med. Servs., L.L.C. v. Gee*, No. 17-30397, 2019 WL 272176, at *1, *5 (5th Cir. Jan. 18, 2019) ("Dissent *II*"). Judge Higginson wrote separately to underscore that "any Justice of the Supreme

Court who decided [*WWH*]," including the dissenters, would likely disagree with the panel majority's decision. *Id.* at *8 ("Dissent *III*").

ARGUMENT

I. Standard of Review

A panel's mandate may be stayed pending the filing of a petition for a writ of certiorari. Fed. R. App. P. 41(d). A stay is appropriate when (1) there is a reasonable probability that the Supreme Court will grant certiorari, (2) there is a significant possibility that the decision of the court of appeals will be reversed, and (3) it is likely that irreparable harm will occur in the absence of a stay. *Baldwin v. Maggio*, 715 F.2d 152, 153 (5th Cir. 1983). All factors are clearly met in this case.

II. There Is a Reasonable Probability the Supreme Court Will Grant Certiorari

The threshold requirement for a stay—i.e., a "reasonable probability" that Plaintiffs' petition for certiorari will be granted—is satisfied.

According to the Supreme Court, certiorari is principally warranted when a decision of the court of appeals "conflicts with relevant decisions of [the Supreme] Court." Sup. Ct. R. 10. The panel majority's decision directly conflicts with *WWH*. Act 620 is identical to the Texas admitting privileges law that the Supreme Court struck down in *WWH*. In fact, the district court found that Act 620 "was modeled after the Texas admitting privileges requirement, and it functions in the

same manner, imposing significant obstacles to abortion access with no countervailing benefits." ROA.4286. More than a reasonable probability exists that the Supreme Court will grant certiorari to remedy this conflict.

The Supreme Court has also stated that certiorari is warranted when a decision of the court of appeals "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10. These criteria are met as well. As Judge Higginbotham and Judge Dennis observed in their dissenting opinions, the panel majority departed from several longstanding rules of appellate judging. Dissent *I* at 816; Dissent *II* at *5-*6. Rather than defer to the district court's well-supported factual findings, the panel majority conducted a de novo review of the evidence and repeatedly substituted its own factual findings for those of the district court. The panel majority also rested its decision on arguments that Louisiana had waived. Dissent *I* at 819-20. Supreme Court review is necessary to correct these blatant deviations from "accepted" and "usual" judicial practice.

Certiorari additionally is necessary to restore the national uniformity in constitutional law that *WWH* established. Prior to *WWH*, courts of appeals were divided over the constitutionality of admitting privileges requirements. *Compare Whole Woman's Health v. Cole*, 790 F.3d 563 (5th Cir. 2015) (holding admitting privileges requirement constitutional) *with Planned Parenthood of Wis., Inc. v.*

Schimel, 806 F.3d 908 (7th Cir. 2015) (holding the opposite). The Supreme Court in *WWH* resolved this unsustainable conflict in favor of women who are unduly burdened by this medically unnecessary requirement. Moreover, the day after deciding *WWH*, the Supreme Court effectively ensured that two virtually identical admitting privileges laws (in Wisconsin and Mississippi) remained enjoined by denying certiorari in two additional appeals. *Schimel v. Planned Parenthood of Wis., Inc.*, 136 S. Ct. 2545 (2016); *Currier v. Jackson Women's Health Org.*, 136 S. Ct. 2536 (2016).

Two and a half years later, the panel majority's decision has reopened the very divide that the Supreme Court sought to remedy in *WWH* and its immediate aftermath.

III. There Is a Significant Possibility of Reversal

The second requirement for a stay—i.e., a significant possibility that the Supreme Court will reverse the panel majority's decision—is satisfied as well. Judge Higginbotham and Judge Dennis identified numerous ways in which the panel majority's decision departs from Supreme Court precedent. Each of these errors, standing alone, would justify reversal. Together, the possibility of reversal by the Supreme Court in this case is assuredly significant.

First, the panel majority misapplied the "undue burden" test articulated by the Supreme Court in *WWH* and held that a challenged law's benefits need not be

considered unless the law's burdens are shown to impose a substantial obstacle to abortion. Judge Dennis recognized in dissent that this "formulation runs directly contrary" to *WWH*'s holding that courts must "'consider the burdens a law imposes on abortion access *together with the benefits* those law confer.'" Dissent *II* at *5 (quoting *WWH*, 136 S. Ct. at 2309) (emphasis added). In fact, the panel majority's version of the undue burden test "eviscerates the balancing required by" *WWH*, "creates bad law," and "runs directly contrary to the Supreme Court's jurisprudence." *Id*.

Second, the panel majority failed to follow *WWH*'s holding that the burdens imposed by admitting privileges requirements are clearly "undue" where, as here, such privileges provide no benefit to women's health or safety. 136 S. Ct. at 2310-11.

The panel majority did not disturb the district court's findings that Act 620 "will not improve the safety of abortion in Louisiana," or that the law "is an inapt remedy for a problem that does not exist." ROA.4240. Moreover, according to its own de novo review of the evidence, the panel majority found that Act 620 could burden 30% of women seeking abortions in Louisiana, *even though it provides them with no safety benefit*. Opinion at 814. Judge Higginbotham recognized that these findings cannot be reconciled with *WWH*, calling it impossible in light of *WWH* to "see how a statute with no medical benefit that is likely to restrict access

to abortion" in this manner "can be considered anything but 'undue.'" Dissent *I* at 829. Yet the panel majority did the impossible.

Third, the panel majority held that Act 620 furthers Louisiana's interest in physician credentialing, even though *WWH* expressly rejected this contention in relation to an identical Texas law. Specifically, according to the panel majority, Act 620 serves a "minimal" credentialing benefit, and the existence of that credentialing benefit distinguishes this case from *WWH*. Opinion at 805-07. But no such distinction can be drawn.

Texas argued strenuously in *WWH* that the burdens inflicted by requiring physicians to have admitting privileges were justified by the benefits to physician credentialing. Brief for Respondents at 32-34, *WWH*, 136 S. Ct. 2292 (No. 15-274). The Supreme Court rejected this argument and held that, because hospitals often deny privileges for reasons that have "nothing to do with" physicians' credentials, admitting privileges requirements do "not serve any relevant credentialing function." *WWH*, 136 S. Ct. at 2312-13.

Here, the panel majority did not disturb the district court's factual finding that hospitals in Louisiana also had refused to grant doctors privileges for reasons unrelated to their credentials. ROA.4206-12. As such, there was no basis for the panel majority to reach a conclusion contrary to *WWH* in this case. Indeed, Judge Dennis found that it "strains credulity" that Louisiana would seek to ensure

physicians are adequately credentialed through the "ill-fitting, indirect approach of hospital admitting privileges." Dissent *II* at *7.

Fourth, *WWH* rejected both the causation standard and large fraction test that the panel majority relied upon to uphold Act 620.

The district court found that Act 620 would force most physicians who provide abortions in Louisiana to stop because they do not have admitting privileges within 30 miles of where they provide abortions. ROA.4270. However, in the panel majority's view, the inability of physicians to continue providing abortions was not caused by Act 620. The cause instead was the physicians' own purported lack of effort in obtaining privileges. Opinion at 807.

WWH rejected this causation standard. In *WWH*, Texas sought to shift blame away from the state's onerous admitting privileges requirement to various supposedly intervening causes. 136 S. Ct. at 2313. The Supreme Court found no merit in Texas's position and held that, in cases such as this, causation is satisfied so long as the admitting privilege requirement is a but-for cause of the burdens on abortion access. *Id.* The panel majority did not even acknowledge *WWH*'s discussion of causation, let alone distinguish it. Rather, as Judge Dennis noted in dissent, the panel majority unilaterally "impose[d] a more demanding" causation standard than "the Supreme Court did in *WWH*." Dissent *II* at *7.

The panel majority also improperly relied on rote mathematical equations to reach its conclusion that Act 620 does not burden a sufficiently "large fraction" of women to facially invalidate the law. Opinion at 813-15. As Judge Higginbotham explained in dissent, *WWH* used the term "large fraction" to ensure that lower courts focus their "constitutional inquiry" on "the group for whom the law is a restriction." Dissent *I* at 831 (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 895 (1992)). But the Supreme Court did not "engage in elaborate calculations of numerators and denominators" or say anything to suggest that such calculations are appropriate. *Id*. at 832 n.52. The panel majority's formulaic approach to the large fraction test betrays a fundamental misunderstanding of the Supreme Court's articulation of the large-fraction test in *WWH* and beyond.

Fifth, the panel majority's blatant disregard for the district court's well-supported factual findings contravenes longstanding Supreme Court precedent.

The Supreme Court made clear in *Anderson* that courts of appeals "may not reverse" a district court's factual findings that are plausible in light of the record evidence. 470 U.S. at 573-74. Here, however, the panel majority disregarded *most* of the district court's well-supported factual findings, and it reversed *nearly all* of the district court's findings as to the burdens Act 620 will inflict. Judge Higginbotham in dissent identified this as the panel's most "fundamental misstep."

Dissent *I* at 833. Judge Dennis called the panel's "retrial of the facts" both "egregious and pervasive." Dissent *II* at *5.

* * *

In sum, the panel majority's decision upholding Act 620 effectively guts *WWH* and conflicts with settled precedent regarding the deference that courts of appeals owe to a trial court's factual findings. Accordingly, the prospect of reversal by the Supreme Court in this case is significant, if not virtually assured.

IV. Irreparable Harm Will Occur Without a Stay

If the mandate is not stayed, Act 620 will become enforceable while Plaintiffs pursue their petition for certiorari. Patients and clinics throughout Louisiana will be irreparably harmed. The panel majority's decision, in Judge Dennis's words, "turn[ed] a blind eye" to the "real-world burdens Act 620 will impose on women." Dissent *II* at *7.

Enforcement of Act 620 would leave "no physician" in Louisiana to care for women who need "abortions between 17 weeks and 21 weeks, six days gestation"—effectively imposing a pre-viability ban on abortion after 17 weeks. ROA.4275. For women at earlier stages of pregnancy, Act 620 could leave just one physician at one clinic providing abortion services. ROA.4270. Since one doctor cannot possibly meet the demands of all women who seek abortions in

Louisiana, some women could be completely denied the choice to terminate a pregnancy and forced to carry the pregnancy to term.

The Supreme Court has described the choice to terminate a pregnancy as among the "most intimate and personal choices a person may make in a lifetime"; a choice "central to personal dignity and autonomy"; and a "liberty protected by the Fourteenth Amendment." *Casey*, 505 U.S. at 851. Depriving women of this constitutionally protected choice is a profound and irreparable harm. *See generally* 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2948.1 (3d ed. 1998) ("When an alleged deprivation of a constitutional right is involved . . . most courts hold that no further showing of irreparable injury is necessary."); *see also Planned Parenthood of Se. Pa. v. Casey*, 510 U.S. 1309, 1310 (1994) (Souter, J., in chambers) (deprivation of the right to abortion "would qualify as 'irreparable injury,' and support the issuance of a stay").

Women who are still be able to access abortion, either from the last remaining provider in Louisiana or by traveling out of state, will be irreparably harmed as well. As the district court found, a significant reduction in the number of physicians providing abortion services will result in delays and increased health risks for women seeking to access abortion—a form of irreparable harm in and of itself. ROA.3857. "Many Louisiana women will also face irreparable harms from the burdens associated with increased travel distances in reaching an abortion

clinic with sufficient capacity to perform their abortions," including "the risks from delays in treatment" and "unlicensed and unsafe abortions." *Id.* Such health risks and adverse consequences, once incurred, can never be undone.

Clinics and physicians also will be irreparably harmed. Only three clinics provide abortion care in Louisiana. The district court found that two clinics will be left with no physicians with admitting privileges and will be forced to close. "The longer a [clinic] remains closed, the less likely it is ever to reopen even if the admitting privileges requirement is ultimately held unconstitutional." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 509 (2013) (Breyer, J., dissenting). Indeed, as the facts of *WWH* revealed, clinics that are forced to close are unlikely to ever reopen. *See* David Yaffe-Bellany, *Five years after Wendy Davis filibuster, Texas abortion providers struggle to reopen clinics*, Texas Tribune (June 25, 2018, 12:00 AM) ("Only three [out of 27] shuttered clinics have managed to reopen in the wake of the Supreme Court decision.").[2]

There are several reasons for this. Clinics lack the financial resources to survive a suspension of their services, and some could lose their licenses to operate. La. Admin. Code tit. 48, § 4525. In addition, the uncertainty over

[2] *Available at* https://www.texastribune.org/2018/06/25/five-years-after-wendy-davis-filibuster-abortion-clinics.

whether the clinics will reopen may prompt physicians and staff to seek out other employment, if not relocate to other states. Such threats to clinics' very existences are irreparable harms. *See Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1179 (5th Cir. 1989) (collecting cases recognizing that irreparable harm occurs "where the potential economic loss is so great as to threaten" a business's "existence").

The constitutional right to safe and legal abortion in Louisiana is hanging on by a thread. Enforcement of Act 620 threatens to all but extinguish the right entirely. To preserve this perilous status quo while Plaintiffs petition the Supreme Court for certiorari, a stay of the mandate is essential. In fact, in the absence of a stay, any relief ultimately granted to Plaintiffs could come too late. Women deprived of abortion access, or whose health and wellbeing are put at risk, can never have their rights restored. Clinics permanently shuttered cannot resume their care for patients, and their physicians and staff will be out of jobs.

Louisiana by contrast will suffer no harm from a stay. Staying the mandate will temporarily preclude Louisiana from enforcing Act 620, but Act 620 has been enjoined since it was enacted in 2014. Continuing not to enforce the statute while the Supreme Court considers Plaintiffs' petition for certiorari is scarcely an inconvenience, let alone irreparable harm. Moreover, given that Act 620 is identical to Texas's unconstitutional admitting privilege law, there is a significant

likelihood that Act 620 will eventually be deemed unconstitutional as well. Louisiana can claim no harm from being prevented from enforcing such a constitutionally infirm law.

V. A Bond Is Not Necessary

No bond is necessary as a condition of granting a stay of the mandate under Rule 41(d)(3) of the Federal Rules of Appellate Procedure. Courts have excepted public interest litigation, such as this case, from the bond and security requirements applied in other cases. *See, e.g.*, *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) ("plaintiffs were engaged in public-interest litigation, an area in which the courts have recognized an exception" to the security requirement). Moreover, Act 620 has been enjoined since 2014, and Plaintiffs were not required to post a bond at the temporary injunction, preliminary injunction, or permanent injunction stages of the case. Louisiana will suffer no damages as a result of staying the mandate, or maintaining the status quo, while Plaintiffs pursue Supreme Court review.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court stay its mandate pending the filing of a petition for a writ of certiorari in the Supreme Court.

Dated: January 25, 2019

Respectfully submitted,

/s/ Travis J. Tu

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CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on January 25, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: January 25, 2019 /s/ Travis J. Tu

CERTIFICATE OF COMPLIANCE

Pursuant to the Federal Rule of Appellate Procedure 32(g), the undersigned certifies that:

1. This document complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 4,064 words and does not exceed 20 pages.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: January 25, 2019 /s/ Travis J. Tu

CERTIFICATE OF CONFERENCE

On January 24, 2019, Plaintiffs' counsel conferred with counsel for Defendant and were informed that Defendant intends to oppose this motion.

Dated: January 25, 2019 /s/ Travis J. Tu